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OFFICE OF PETITIONS

In re Patent No. 6,074,243 :
Issue Date: June 13, 2000 :
Application No. 08/889,398 :
Filed: July 8, 1997 :
Patentee(s): Jimmy Lee Edwards :

ON PETITION

This is a decision on the petitions under 37 CFR §§ 1.378(b) and (c), filed on June 3, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent. The delay in responding is sincerely regretted.

The petition under 37 CFR 1.378(b) is **dismissed**.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1) above.

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable". 35 U.S.C. § 41(c)(1).

Petitioner states that the delay in payment of the maintenance fee was unavoidable due to petitioner's physical infirmities and the fact that "my wife handled all my financial matters because I was unable to."

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

Decisions on reviving abandoned applications have adopted the "reasonably prudent person" standard in determining if the delay in responding to an Office action was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-515 (D.C. Cir. 1912); and Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141. In addition, decisions on revival are made on a "case-by-case basis, taking all the

facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

In essence, petitioner must show that he was aware of the need to pay the maintenance fee, and to that end was tracking it, or had engaged someone to track it before the expiration, but when the fee came due, was "unavoidably" prevented from making the maintenance fee payment due to his medical condition until the petition was filed.

As to the health problems, petitioner states "I am a 100% Disabled Veteran wounded 2 Purple Hearts Vietnam. Among others is 100% for Post Traumatic Stress Disorder (paper att.)." Petitioner must provide documents from licensed health care providers, demonstrating the nature and extent of petitioner's incapacitation, in such a manner that petitioner was, from the date of expiry until the filing of the petition on June 3, 2010, "unavoidably" prevented from taking any earlier action with respect to this patent. Additionally, petitioner must state how he manages to conduct his daily personal and business affairs, including scheduling and settlement of short and long term debts and business obligations, bills, rent or mortgage payments, income taxes etc., during the time in question. Petitioner must demonstrate that his health problems were such as to cause the payment of the maintenance fee to have been unavoidably delayed.

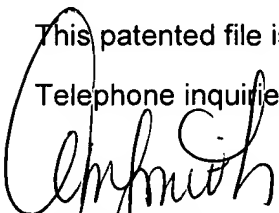
While the undersigned sympathizes with petitioner the record fails to disclose that the patentee took reasonable steps to ensure timely payment of the maintenance fee. In fact, the record indicates that no steps were taken by patentee to ensure timely payment of the maintenance fee. Since no steps were taken by patentee, 37 CFR 1.378(b) precludes acceptance of the delayed payment of the maintenance fee.

On the other hand, since petitioner has demonstrated to the satisfaction of the Commissioner that the delay in timely paying the maintenance fee was unintentional, the petition under 37 CFR 1.378(c), filed on June 3, 2010, is hereby **GRANTED**.

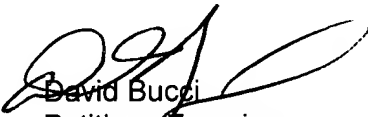
The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

This patented file is being forwarded to Files Repository.

Telephone inquiries should be directed to Andrea Smith at (571) 272-3226.



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David Bucci
Petitions Examiner